

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Respondent-Appellant,	:	No. 15AP-37
v.	:	(C.P.C. No. 04CR-5572)
	:	
James F. Hussak,	:	(ACCELERATED CALENDAR)
	:	
Petitioner-Appellee.	:	

D E C I S I O N

Rendered on July 28, 2015

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for
appellant.

Yeura R. Venters, Public Defender, and *David L. Strait*, for
appellee.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Respondent-appellant, State of Ohio ("State"), appeals from the judgment of the Franklin County Court of Common Pleas, reinstating petitioner-appellee's, James F. Hussak ("Hussak"), classification as a "sexually oriented offender" under Megan's Law. Both parties agree that the correct classification for Hussak is "aggravated sexually oriented offender." For the reasons that follow, we affirm the judgment in part but remand the matter with instructions to modify the entry of the Franklin County Court of Common Pleas.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} In September 2005, Hussak pled guilty to two counts of rape without the allegation of force. (R. 100.) Both of his victims were females under the age of thirteen. (R.

2.) Under the applicable law at that time, Megan's Law, the crime of rape of a child under thirteen was an "aggravated sexually oriented offense." *See* R.C. 2950.01(O) (eff. 6-13-2002). On September 26, 2005, the court filed its judgment reflecting that the court imposed concurrent four-year prison terms on the two counts. (R. 103.) In addition, the judgment reflected that petitioner was a "Stipulated Aggravated Sexually Oriented Offender." *Id.*

{¶ 3} On January 1, 2008, R.C. 2950.01 et seq. also known as the Adam Walsh Act ("AWA"), replaced Megan's Law. Under the AWA, all previously classified sex offenders were required to reclassify into one of three tiers. Hussak's particular reclassification required him to register as a Tier III Sex Offender. The AWA was met with many challenges to the constitutionality of requiring previously classified sex offenders to reclassify under the new law.

{¶ 4} In August 2008, Hussak filed his own petition challenging the constitutionality of the AWA. The trial court filed an entry staying the proceedings until the Supreme Court of Ohio ruled on the constitutionality of the AWA. (R. 139.)

{¶ 5} In a series of cases, the Supreme Court ruled that requiring sex offenders who were previously classified under Megan's Law to reclassify under the AWA was unconstitutional. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424; *State v. Gingell*, 128 Ohio St.3d 444, 2011-Ohio-1481; *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374. The Supreme Court held that the remedy was to reinstate the classification of the offender that existed prior to the enactment of the AWA.

{¶ 6} On January 9, 2015, the trial court, relying on the decisions in *Bodyke*, *Williams*, and *Core v. State*, 10th Dist. No. 09AP-192, 2010-Ohio-6292, entered a judgment granting Hussak's petition to contest reclassification. The trial court vacated Hussak's reclassification under the AWA and reinstated "the classification of sexually oriented offender * * * previously in existence" instead of the actual prior classification of "aggravated sexually oriented offender." (Trial Court Judgment, 1.)

II. ASSIGNMENT OF ERROR

{¶ 7} The State appeals, assigning the following as error:

THE COMMON PLEAS COURT ERRED IN GRANTING
RELIEF THAT REINSTATED PETITIONER AS A SEXUALLY
ORIENTED OFFENDER WHEN THE RECORD

DEMONSTRATED THAT PETITIONER WAS AN AGGRAVATED SEXUALLY ORIENTED OFFENDER AND WHEN MEGAN'S LAW REQUIRED SUCH CLASSIFICATION AS A MATTER OF LAW.

III. STANDARD OF REVIEW

{¶ 8} Pursuant to the Supreme Court decisions in *Bodyke, Gingell, and Williams*, the trial court was directed to reinstate Hussak's prior classification as a matter of law. Challenges to a trial court's judgment on a matter of law are reviewed de novo. *Traub v. Warren Cty. Bd. of Commrs.*, 114 Ohio App.3d 486, 489 (10th Dist.1996); *Spitznagel v. State Bd. of Edn.*, 10th Dist No. 07AP-757, 2008-Ohio-5059, ¶ 47. We therefore review the record to determine whether the trial court returned Hussak to the proper classification when it reinstated his prior classification under Megan's Law.

IV. ASSIGNMENT OF ERROR – NO DISPUTE THAT "AGGRAVATED SEXUALLY ORIENTED OFFENDER" WAS THE PROPER CLASSIFICATION

{¶ 9} There are no disputed issues between the parties. The State claims that the trial court was proper in ruling that Hussak should have his classification prior to enactment of the AWA reinstated; Hussak concedes the same. Both parties agree that Hussak's previous classification was as an "aggravated sexually oriented offender" and that he should have been reinstated as such. Hussak agrees with the State's request that this court modify the judgment of the trial court to reinstate Hussak properly as an "aggravated sexually oriented offender."

{¶ 10} Under App.R. 12, this court has the ability to modify the judgment of the trial court. App.R. 12(A)(1)(a). Here, it is clear that the trial court correctly interpreted the law to require that an offender classified prior to the AWA be reinstated to the prior classification. It is also clear that the trial court intended to reinstate Hussak's classification that was "previously in existence," i.e., "aggravated sexually oriented offender," but inadvertently omitted the word "aggravated." In accordance with App.R. 12(B), we find that the judgment of the trial court should be modified as a matter of law. Therefore, the trial court's judgment should be modified to reinstate Hussak's prior classification as an "aggravated sexually oriented offender" consistent with this decision. The State's assignment of error is sustained only to the extent necessary to correct and modify Hussak's classification.

V. DISPOSITION

{¶ 11} The judgment of the Franklin County Court of Common Pleas is affirmed in part but remanded with instructions to modify the judgment entry to reinstate Hussak as an "aggravated sexually oriented offender." This matter is remanded to the trial court to journalize an entry consistent with this decision.

*Judgment affirmed in part;
remanded with instructions.*

BROWN, P.J. and KLATT, J., concur.
